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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,539	01/21/2000	Helen Viazmensky	DEXNON/096/US	5964

2543 7590 04/10/2003

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EXAMINER

GUARIELLO, JOHN J

ART UNIT PAPER NUMBER
1771

DATE MAILED: 04/10/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/489539	Applicant(s)	Viazemsky et al.
Examiner	John Guarriello	Group Art Unit	1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 2/7/2003, 2/12/2003.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-9, 11-18, 20-22 is/are pending in the application.

Of the above claim(s) 15 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-9, 11-14, 16-18, 20-22 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other _____

Office Action Summary

Art Unit: 1771

DETAILED ACTION

Election/Restriction

15. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14 and 16-20, drawn to porous web material and the process of making the porous web material, classified in class 442, subclass 389.
- II. Claim 15, drawn to an infusion container, classified in class 426, subclass 84.

16. The Examiner acknowledges papers # 7-9, the CPA, and amendment of 2/7/2003; and the extension of time of 2/12/2003. The Examiner repeats the Restriction requirement which was originally presented in paper # 2 of 12/6/2001.

Art Unit: 1771

17. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the web material may be used as a flat filter sheet.

18. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

19. During a telephone conversation with James Piotrowski on March 13,2001 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-14 and 16-20. Affirmation of this election must be made by applicant in replying to this Office action. Claim 15 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Art Unit: 1771

20. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

21. Claim 1 is objected to because of the following informalities: line 2, it is not clear what the letter "q" means in front of the term "consisting". This appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 102

22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an

Art Unit: 1771

international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-4, 6, 9, 11, 16-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Gbur et al. 6,139,883.

Gbur describes a fibrous, porous web material of the non-heat seal tissue having a basis weight of 9-18 g/square meter., (see abstract; column 1, lines 5-10). Gbur describes the non-heat seal paper is generally comprised of a single layer with a basis weight of 12.3 g/ square meter, (column 2, lines 1-4). Gbur describes the non-heat seal paper is generally comprised of a single layer of vegetable fibers which does not incorporate **fusible** polymeric fibers, which does not exclude any synthetic non-fusible polymeric fibers and can include any synthetic **non-fusible** polymeric fibers , (column 1, lines 19-23). Gbur describes the fibers can have lengths of 0.8 mm. to 5 mm., (column 3, lines 40-44) Gbur implies that the weight of the vegetable fibers is about 90% by weight, (column 3, lines 27-28), which implies that the synthetic fiber amount would be about 10% by weight which encompasses the claimed

Art Unit: 1771

invention. It is the Examiner's position that Gbur describes the essential limitations of the claimed invention regarding a single layer. Nonwoven web is inherent in Gbur. Claims lack novelty.

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claims 1, 5, 7, 8, 12-14, 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gbur et al. 6,139,883 in view of Scott et al. 5,431,997 or Osborne 2,414,833.

Gbur as in paragraph # 20 with the exception that the specific non-fusible synthetic materials are not stated.

Art Unit: 1771

Scott describes webs of the non-heat seal variety which can include natural fibers as well as lesser amounts of synthetic fiber materials, (column 3, lines 26-39).

Osborne describes synthetic thermoplastic filtering paper of about 15-25 wt. %, (column 4, lines 74-75; column 5, lines 1-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the synthetic materials of Scott or Osborne for the man made fibers of Gbur motivated with the expectation that these synthetic materials of Scott or Osborne would function equivalently to enhance the properties of diffusion of the web material because of their light weight as noted by Scott, (column 3, lines 23-38). Moreover, since the basis weight overlaps the claimed invention it would be expected that one of ordinary skill in the art could routinely determine the % of transmittance of the claimed invention.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone

Art Unit: 1771

number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


John J. Guarriello:gj
Patent Examiner

March 31, 2003


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700